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**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE, NO. 01-244  
(Judge Charles W. Cope)

Case No. SC01-2670

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**SPECIAL COUNSEL'S RESPONSE TO JUDGE COPE'S EMERGENCY MOTION  
FOR PROTECTIVE ORDER REGARDING NINA JEANES**

The Special Counsel hereby responds to the Emergency Motion for Protective Order served by Judge Cope on June 11, 2002, regarding the deposition of Dr. Nina Jeanes and states:

1. Judge Cope cites no legal authority for his motion. Florida law authorizes a witness to be deposed and for the deposition to be used "for any purpose" at trial where the witness lives out of state, "unless it appears that the absence of the witness was procured by the party offering the deposition." Rule 1.330(a)(3), Florida Rules of Civil Procedure.

2. Dr. Jeanes lives in Maryland, and the Special Counsel certainly had no role in her decision to live there.

3. Even if there were some legal basis on which to restrict the Special Counsel's right to take her deposition for use at trial, there would be no good reason to do so. Judge Cope, who has set no less than seven depositions for the week before trial, will not be prejudiced. He already has counsel in Maryland who has attended the previous depositions set by Judge Cope of Nina Jeanes and her daughter. His Florida counsel can always appear by telephone if he chooses not to travel.

4. Moreover, Dr. Jeanes is not a central witness in this case. She does not recall

most of the events of the first night in question and did not see who was at the door the second night.

5. The reason that the Special Counsel desires to take her deposition in lieu of having her testify by videoconference is that her testimony will center on her call to 911 on the second night. This call was recorded and the audio taped will be offered into evidence. Because the tape is inaudible at certain points and because the parties disagree on what certain statements on the tape mean in context (e.g., whether Officer Philip Nash was at the door when Dr. Jeanes told the 911 operator that her daughter was opening the door). This will require the Special Counsel to not only play the audio tape during the deposition, but to stop and start the tape several times as part of the examination.

6. The Special Counsel is simply afraid that this cannot effectively be done by videoconference. The videoconferencing technology can result in delays in the audio transmission and confusion that may hinder the ability of the Special Counsel to conduct his examination and the ability of the Hearing Panel to understand it.

7. The Special Counsel's first preference would be for Dr. Jeanes to come to Florida to testify in person. Dr. Jeanes has advised, however, that she has prior travel plans later in the week that would make traveling to Clearwater impractical. She is a practicing gynecologist actively seeing patients. The Special Counsel simply lacks the authority to require her to travel to Florida.

8. While the Special Counsel perceives no risk of prejudice to Judge Cope, if any material prejudice becomes apparent after the taking of the deposition, it could then be

addressed as appropriate. Indeed, this was the Chair's suggestion at the June 5 hearing. (June 5, 2002 Transcript at 52.)

WHEREFORE, Judge Cope's Emergency Motion for Protective Order should be denied.

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 11th day of June, 2002.

By:  
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